

106TH CONGRESS  
2D SESSION

# H. R. 4507

To designate the Surface Transportation Board as a forum for resolution of disagreements between mass transportation authorities and freight railroads regarding access to freight track and rights-of-way for fixed guideway transportation in consideration for just and reasonable compensation to freight railroads.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2000

Mr. CLEMENT (for himself, Mr. MICA, Mrs. TAUSCHER, Mr. REGULA, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To designate the Surface Transportation Board as a forum for resolution of disagreements between mass transportation authorities and freight railroads regarding access to freight track and rights-of-way for fixed guideway transportation in consideration for just and reasonable compensation to freight railroads.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transit Rail Access  
5 Improvement and Needs Act for the 21st Century”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) modern and efficient fixed guideway trans-  
4 portation is important to the viability and well being  
5 of metropolitan areas and to the energy conservation  
6 and self-sufficiency goals of the United States;

7 (2) public convenience and necessity require the  
8 development of fixed guideway transportation sys-  
9 tems in metropolitan areas presently without such  
10 service, and the expansion of existing systems in  
11 metropolitan areas already receiving such service;

12 (3) use of existing railroad trackage and rights-  
13 of-way in and around metropolitan areas provides a  
14 unique and valuable opportunity for the development  
15 and expansion of fixed guideway transportation fa-  
16 cilities with a minimum of disruption to the environ-  
17 ment and the surrounding community; and

18 (4) voluntary negotiations between mass trans-  
19 portation authorities and rail carriers regarding  
20 shared use of existing railroad trackage and rights-  
21 of-way have not been adequate to ensure the devel-  
22 opment of sound and efficient fixed guideway trans-  
23 portation systems.

1 **SEC. 3. RAIL TRANSIT ACCESS.**

2 (a) AMENDMENT.—Part E of subtitle V of title 49,  
 3 United States Code, is amended by adding at the end the  
 4 following new chapter:

5 **“CHAPTER 285—RAIL TRANSIT ACCESS**

“Sec.

“28501. Definitions.

“28502. Shared use of rail carrier trackage by mass transportation authorities.

“28503. Shared use of rail rights-of-way by mass transportation authorities.

“28504. Applicability of other laws.

“28505. Standards for Board action.

6 **“§ 28501. Definitions**

7 “In this chapter—

8 “(1) ‘Board’ means the Surface Transportation  
 9 Board;

10 “(2) ‘fixed guideway transportation’ means  
 11 mass transportation (as defined in section  
 12 5302(a)(7)) provided on, by, or using a fixed guide-  
 13 way (as defined in section 5302(a)(4));

14 “(3) ‘mass transportation authority’ means a  
 15 local governmental authority (as defined in section  
 16 5302(a)(6)) established to provide, or make a con-  
 17 tract providing for, fixed guideway transportation;

18 “(4) ‘rail carrier’ means a person providing  
 19 common carrier railroad transportation for com-  
 20 pensation subject to the jurisdiction of the Board  
 21 under chapter 105;

1 “(5) ‘segregated fixed guideway facility’ means  
 2 a fixed guideway facility constructed within the rail-  
 3 road right-of-way of a rail carrier but physically sep-  
 4 arate from trackage, including relocated trackage,  
 5 within the right-of-way used by a rail carrier for  
 6 freight transportation purposes; and

7 “(6) ‘trackage’ means a railroad line of a rail  
 8 carrier, including a spur, industrial, team, switching,  
 9 side, yard, or station track, and a facility of a rail  
 10 carrier.

11 **“§ 28502. Shared use of rail carrier trackage by mass**  
 12 **transportation authorities**

13 “(a) AUTHORITY.—If, after negotiation, a mass  
 14 transportation authority cannot reach agreement with a  
 15 rail carrier to use trackage of, and have related services  
 16 provided by, the rail carrier for purposes of fixed guideway  
 17 transportation, the Board shall, upon application of the  
 18 mass transportation authority or the rail carrier, and if  
 19 the Board finds it necessary or useful to carry out this  
 20 chapter—

21 “(1) order that the trackage be made available  
 22 and the related services be provided to the mass  
 23 transportation authority; and

24 “(2) prescribe reasonable terms and compensa-  
 25 tion for use of the trackage and provision of the re-

1       lated services, based upon the rail carrier's incre-  
2       mental cost of providing such trackage and services.

3       “(b) QUALITY OF SERVICE.—When prescribing rea-  
4       sonable compensation under subsection (a)(2), the Board  
5       shall consider quality of service as a major factor when  
6       determining whether, and the extent to which, the amount  
7       of compensation shall be greater than the incremental  
8       costs of using the trackage and providing the related serv-  
9       ices.

10       “(c) TERMS OF OPERATION.—When prescribing rea-  
11       sonable terms under subsection (a)(2), the Board may pre-  
12       scribe the number of trains that may be operated by or  
13       for the mass transportation authority, the speeds at which  
14       such trains may be operated, and the trackage mainte-  
15       nance levels to be provided by the rail carrier.

16       “(d) ADDITIONAL TRAINS.—When a rail carrier and  
17       a mass transportation authority cannot agree to terms for  
18       the operation of additional trains by or for a mass trans-  
19       portation authority over a rail line of the carrier, the mass  
20       transportation authority or the rail carrier may apply to  
21       the Board for an order establishing such terms. If the  
22       Board finds it reasonable to carry out this chapter, the  
23       Board shall order the rail carrier to allow operation of the  
24       requested additional trains on such terms as the Board  
25       finds reasonable under the circumstances.

1       “(e) TRACKAGE MAINTENANCE.—If a mass transpor-  
2   tation authority believes that maintenance on trackage op-  
3   erated by or for the mass transportation authority has  
4   fallen below a safe or necessary level, the mass transpor-  
5   tation authority may, after notice to the rail carrier and  
6   a sufficient period for maintenance improvements, apply  
7   to the Board for an order requiring the rail carrier to pro-  
8   vide increased or improved maintenance on the trackage.  
9   If the Board finds it reasonable to carry out this part,  
10  the Board shall order the rail carrier to provide such in-  
11  creased or improved maintenance as the Board finds rea-  
12  sonable under the circumstances. The remedy available  
13  under this subsection shall be in addition to any contract  
14  rights that a mass transportation authority may possess  
15  with respect to trackage maintenance.

16       “(f) ACCELERATED SPEEDS.—If a rail carrier re-  
17  fuses to allow accelerated speeds for trains operated by  
18  or for a mass transportation authority, the mass transpor-  
19  tation authority may apply to the Board for an order re-  
20  quiring the rail carrier to allow the accelerated speeds and  
21  related improvements. The Board shall decide whether ac-  
22  celerated speeds are unsafe or impracticable and which im-  
23  provements would be required to make accelerated speeds  
24  safe and practicable. The Board shall establish the max-  
25  imum allowable speeds for trains operated by or for a

1 mass transportation authority on terms the Board decides  
2 are reasonable.

3 “(g) PREFERENCE OVER FREIGHT TRANSPOR-  
4 TATION.—Except in an emergency, fixed guideway trans-  
5 portation provided by or for a mass transportation author-  
6 ity pursuant to an order issued under subsection (a) has  
7 preference over freight transportation in using a rail line,  
8 junction, or crossing unless the Board orders otherwise  
9 under this chapter. A rail carrier affected by this sub-  
10 section may apply to the Board for relief. If the Board  
11 decides that preference for fixed guideway transportation  
12 materially will lessen the quality of freight transportation  
13 provided to shippers, the Board shall establish the rights  
14 of the rail carrier and the mass transportation authority  
15 on reasonable terms.

16 “(h) FINAL DETERMINATION.—The Board shall  
17 make a determination under this section not later than  
18 120 days after a mass transportation authority or a rail  
19 carrier submits an application to the Board.

20 **“§ 28503. Shared use of rail rights-of-way by mass**  
21 **transportation authorities**

22 “(a) GENERAL AUTHORITY.—If, after negotiation, a  
23 mass transportation authority cannot reach agreement  
24 with a rail carrier to acquire an interest in a railroad  
25 right-of-way for the construction and operation of a seg-

1 regated fixed guideway facility, the mass transportation  
 2 authority may apply to the Board for an order requiring  
 3 the rail carrier to convey an interest to the authority. The  
 4 Board, not later than 120 days after receiving the applica-  
 5 tion, shall order the interest conveyed if—

6           “(1) conveyance will not impair significantly the  
 7       efficient handling of rail freight traffic;

8           “(2) the mass transportation authority assumes  
 9       all reasonable costs associated with any necessary  
 10      relocation of a rail carrier’s trackage within the  
 11      right-of-way; and

12          “(3) the fixed guideway transportation purpose  
 13      of the proposed segregated fixed guideway facility  
 14      cannot be met adequately by acquiring an interest in  
 15      other property.

16          “(b) COMPENSATION AND TERMS.—A conveyance or-  
 17      dered by the Board under this section shall be subject to  
 18      the payment of just compensation and to such other rea-  
 19      sonable terms as the Board may prescribe.

20      **“§ 28504. Applicability of other laws**

21          “(a) BOARD REVIEW OR APPROVAL.—Operations or  
 22      conveyances undertaken pursuant to an order issued  
 23      under section 28502 or 28503 are not subject to Board  
 24      review or approval under subtitle IV of this title.



1       “(b) CONTRACTUAL OBLIGATIONS FOR CLAIMS.—  
 2 Nothing in this chapter shall be construed to limit a rail  
 3 transportation provider’s right under section 28103(b) to  
 4 enter into contracts that allocate financial responsibility  
 5 for claims.

6   **“§ 28505. Standards for Board action**

7       “In proceedings under sections 28502 and 28503 the  
 8 Board shall utilize, to the extent relevant and feasible, the  
 9 principles, standards, and precedents utilized in pro-  
 10 ceedings under sections 24308 and 24311(c) involving the  
 11 National Railroad Passenger Corporation.”.

12       (b) CONFORMING AMENDMENTS.—

13               (1) LIMITATIONS ON RAIL PASSENGER TRANS-  
 14 PORTATION LIABILITY.—Section 28103(a) of title  
 15 49, United States Code, is amended by inserting “or  
 16 other fixed guideway transportation” after “com-  
 17 muter”.

18               (2) TABLE OF CHAPTERS.—The table of chap-  
 19 ters of subtitle V of title 49, United States Code, is  
 20 amended by adding after the item relating to chap-  
 21 ter 283 the following new item:

“285. RAIL TRANSIT ACCESS ..... 28501”.

